

## REMARKS/ARGUMENTS

Claims 1-31 remain in the application. Claims 1 and 8 are amended. Claims 5 and 9 are canceled. Claims 32 and 33 have been added. Claims 2, 4, 7, and 11-31 have been withdrawn as the result of restriction and election of species requirements.

Claim 1 is amended to incorporate the limitations of canceled claim 5. Claim 8 is amended to incorporate the limitations of canceled claim 9. The Examiner's objection to a typographical error in claim 9 is negated based on the cancellation of claim 9.

### *Claim Rejections – 35 USC § 102*

The Examiner rejected claims 1, 3, 5, 6, 8, 9, and 10 under 35 USC § 102(b) as being anticipated by US Patent No. 1,074,242 to Caldwell.

Applicant appreciates the clarity with which the rejection was presented by the Examiner, namely, the Examiner's efforts in annotating FIG. 1 of Caldwell.

Caldwell discloses a "metal structure" that serves the function of a structure, stud, or joist. *See* Caldwell col. 1, lines 31-33. The metal structure of Caldwell is primarily structural framing to take the place of wood studs and joists or to support a wall. *See* Caldwell col. 1, lines 12-23. Plaster boards 2 or equivalent are held in place with the metal structure, which have angled flanges 3 and bendable tangs 4. *See* Caldwell col. 1, line 52 to col. 2, line 66 and FIG. 2. As shown in FIG. 2, each flange has an opposing flange across from it, such that at any given position along the longitudinal axis of the metal structure the cross-sectional shape is a "U." The paired flanges of Caldwell are not readily accessible from a single side; direct access to any flange from across the metal

structure is impeded by a corresponding flange.

Independent claim 1 as amended recites tabs that effectively form a “Z” shape in cross-section. There are no directly opposing tabs recited, and accordingly access to each tab is available from one side. With respect to annotated FIG. 1 of Caldwell that appears in the Office Action, Applicant respectfully submits that Applicant’s claim 1 as amended recites “a third tab extending from the second edge at approximately a 90 degree angle from the *second* side.” The Caldwell flange that is labeled “third tab,” however, is at a 90 degree angle from the *first* side. Claim 1 requires that the first and third tabs extend away from opposite sides of the web.

Further, given a designation of the first, second, and third tabs that meets the recited edges and directions of orientation of the tabs in amended claim 1, in no sense can a tab of Caldwell, extending from an opposite edge from a first tab and extending in an opposite direction from a first tab, be in longitudinal registration with a first tab. For example, if the Caldwell flange labeled in the Office Action as “fourth tab” were instead labeled “third tab,” it would not be in longitudinal registration with the first tab as recited in amended claim 1.

Thus, a “Z” shape results from the amended claim 1 recited configuration of the first and third tabs and the web. “Bending opposing tabs in opposite directions provides clear, open access to the surface of the tab that is to be attached to a framing member.” Applicant’s specification at paragraph [0026]. This is distinct from the wall supporting studs and structure of Caldwell.

Claim 10 recites first, second, and third tabs, with the first and third tabs in longitudinal registration, similarly to amended claim 1. In addition, a fourth tab is added,

“extending from the second edge at approximately a 90 degree angle from the first side,” and the second and fourth tabs are in longitudinal registration. As may be seen from the annotated Caldwell FIG. 1 in the Office Action, the figure as labeled does not satisfy the recital that the first and third tabs must be bent in opposite directions (first tab along the first edge 90 degrees from the first side and third tab along the second edge 90 degrees from the second side – effectively “Z” shaped). If the “fourth tab” of Caldwell was labeled “third tab,” the first and third tabs would not be in longitudinal registration. With respect to the second and fourth tabs, they must be bent on opposite directions (second tab along the first edge 90 degrees from the second side and fourth tab along the second edge 90 degrees from the first side – again effectively “Z” shaped). If the Caldwell “third tab” was labeled “fourth tab,” the second and fourth tabs would not be in longitudinal registration.

In order for a reference to anticipate a claimed invention, the reference must teach each and every element in the precise arrangement set forth in the claim. If the reference fails to teach even one of the claimed features, the reference does not and cannot anticipate the claimed invention. Based upon at least the structural deficiencies of the disclosure in Caldwell identified in the preceding remarks, Applicant respectfully requests that the rejection of claims 1 and 10 be withdrawn. In addition, there is no teaching or suggestion in Caldwell to alternate direction of bending tabs along a longitudinal axis in configuring a thermal framing component.

Dependent claims 3, 6, and 8 depend from independent amended claim 1. Because of those dependencies, these claims contain all of the features of their base

independent claim. Therefore, such claims are submitted to be patentably distinguishable over Caldwell.

### ***New Claims***

New claims 32 and 33 recite features neither taught nor suggested by any of the documents of record. Therefore, these claims are submitted to be patentable and allowance thereof is respectfully solicited. Support for claims 32 and 33 may be found throughout Applicant's specification and figures. Support for claim 33 may also be found in Applicant's paragraphs [0026], [0027], and [0029].

### **CONCLUSION**

In view of the foregoing amendments and remarks, Applicant submits that all claims are now in condition for allowance. Accordingly, allowance of such claims is respectfully requested. If the Examiner has any questions about the present Amendment a telephone interview is requested.

Respectfully submitted,

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